

美国马萨诸塞邦一般法第 234A 章「马联邦决认团专员办公室」汉译及翻译评述

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美国马萨诸塞邦一般法第 234A 章“马联邦
决认团专员办公室”汉译及翻译评述

A Chinese Translation of Chapter 234A “Office of Jury
Commissioner for the Commonwealth” of the General
Laws of Massachusetts and a Report on the Translation

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Abstract

This thesis is a Chinese translation of Chapter 234A “Office of Jury Commissioner for the Commonwealth” of the General Laws of Massachusetts and the translation review, which is a part of the translation project “Jury Information in the Massachusetts Court System” led by Professor Hu Zhaoyun. This Chapter stipulates juror service qualification, methods of juror selection and summoning, jurors’ rights and obligations, methods of juror compensation and delinquency penalties, responsibilities of the courts and office of jury commissioner, jury impaneling procedures, etc. of Massachusetts, the translation of which would be a great reference for Chinese scholars in law and interested individuals to learn about the jury system of the United States. The translation of terms is of great importance in this project. As the key concept of the translation project, jury system is a judicial system with its own operating rules, many legal terms therein bear unique meanings, the translation of which shall have dedicated usage so as to reflect the significance and uniqueness of this system. The author refers to related studies, thoughts and discussions on jury and jury system-related terms conducted by Professors Hu Zhaoyun, Zhao Xinshu and other scholars, adopts new translation for words such as “jury”, “verdict”, “direction”, “charge” and “summons” suggested by Professor Hu, ensuring that the translation of terms are unique and accurate. It is not an easy task to promote a new translation against prevailing translation, nevertheless, it is the translators’ responsibility to make the best endeavor to ensure correctness of communication and present the new translation so that it can have the opportunity to be tested by the public and proved by time. The representation of the distinct text structure and language features of the source text in the target language is another important aspect in translation. The author recognizes that legal text is solemn and rigid, with strict structure, formal sentences and frequent usage of long and compound sentences, therefore, emphasis has been placed on the translation of modal verbs, long and compound sentences, nominalized

words, passive forms and typical legal English syntax. The author endeavors to realize the replacement of a text written in a source language by a semantically and pragmatically equivalent text written in the target language, to achieve that the translation not only conveys the meaning of the source text but also is in conformity with the textural structure and language features of legal text in target language. It is learned that the translation of legal text has its particular characteristics, systematic study and practice would be necessary in order to master this field of translation.

Key Words: English-Chinese translation; legal English; jury; juror; new translation

摘要

本文是美国马萨诸塞邦一般法第 234A 章“马联邦决认团专员办公室”的汉译及翻译评述,属于导师胡兆云教授组织的翻译项目——马萨诸塞邦法院系统决认信息(Jury Information in the Massachusetts Court System)的一部分。第 234A 章详细规定了决认员服务资格、决认员遴选办法、征召办法、决认员的权利与义务、决认员补贴办法及失职处罚、法院及决认团专员办公室的职责、决认团选任办法等,对了解美国的决认团制度具有重要的参考意义。翻译时,术语翻译是必须特别重视的一个方面。决认团制度是本翻译项目的核心概念,作为一个自成一体司法制度,其诸多法律术语在该制度语境下具有独特的含义,翻译时应为这些术语给定专门译名,方能体现这一制度的重要性和独特性。笔者参考胡兆云教授、赵心树教授等人对 jury 及 jury system 相关术语的研究、思考与辨误,采用了胡兆云创译的“jury——决认”、“verdict——威定”、“direct/direction——导示”、“charge——咨示”、“summons——征票”等新译,使译名具备独创性、准确性,从译名上给予这套制度应有的重视,体现出这套制度的独特性与重要性。针对流传已久的旧译提倡新译并非易事,但译者应在追求翻译本真的道路上知难而上,尽力而为,让新译接受公众和时间的检验,相信终能拨误返真。翻译中的另一个重要方面是再现法律文体鲜明的语篇结构和语言特点。笔者充分认识法律文体庄重刻板、语句正规、结构严谨、频繁使用长句和复杂句的特点,翻译时着力于情态动词、长句、名词化词语、被动式、典型法律英文句式等法律文体的重难点,尽量用语义和语用对等的译语文本代替原语文本,使译文既准确传达出原文的意思,在形式上也符合汉语法律文体的语篇结构和语言特点。法律英语的翻译有其自身的鲜明特点,笔者通过本翻译实践项目只是窥知一二,希望以后能有机会进行更加系统的理论研究和实践。

关键词: 英汉翻译 法律英语 决认团 决认员 新译

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第一章 引言

1.1 翻译实践项目选题背景及意义

本文试将马萨诸塞邦一般法(the General Laws of Massachusetts)第三编(Part III)第二节(Title II)下 Chapter 234A “Office of Jury Commissioner for the Commonwealth”(第 234A 章“马联邦决认团^①专员办公室”,下称“第 234A 章”)译成中文,并对翻译过程及译文进行分析总结,加以评述。第 234A 章是导师胡兆云教授组织的翻译项目——Massachusetts Court System 官网中 Jury Information 选项卡(<http://www.mass.gov/courts/jury-info/mass-jury-system/>)项下内容的一部分。马萨诸塞邦是美国最早在全邦实行“一天或一判”^②(One Day or One Trial)决认团制度的邦,其决认团制度的历史沿革及具体实施办法对美国决认团制度的发展完善具有重要意义。该项目详细介绍了马萨诸塞邦决认团制度的历史、现状、决认员征召办法、决认团专员办公室职责、决认员类型及其权利与义务等,是了解美国决认团制度的第一手资料。

决认团制度是美国的一项重要司法制度,17 世纪初随英国殖民者的到来而传入,最先在弗吉尼亚殖民地实行,本是为保护英国本籍殖民者的权利,现代意义上的美国决认团制度是在对殖民地时期“贵族陪审制”进行了充分批判的基础上发展起来的。在殖民地时期,决认团成为美国人民反抗王权压迫、保障民主的象征,著名案例有 1735 年的约翰·彼得·曾格(John Peter Zenger)审判案,纽约决认团认定对曾格指控的诽谤罪不成立,理由是他对王家总督的言论属实。(Rita, 1980:5, 本文作者译)独立战争胜利后,法官和决认团的职能开始分离,决认团主要负责案件事实部分的裁定,法官负责法律问题适用部分,进入 20 世纪后,美国决认团制度又经历了决认员遴选、决认团威定^③原则改革,且不断以立法形式确定下来,最终构成了如今的决认制运作模式及法律基础,该制度对促进司法

^①原文为“jury”,旧译“陪审团”,本文采用胡兆云教授创译的“决认团”。——本文作者注。本文以下脚注,皆为本文作者所注,不再标出注者。

^②原文为“One Day or One Trial”,旧译“一天或一案”、“一天或一审判”等,本文采用胡兆云教授创译的“一天或一判”。

^③英文为“verdict”,旧译“裁断、裁决、判决”,本文采用胡兆云教授创译的“威定”。

民主、确保审判独立、促进司法公正、增进国民对司法的信赖、提高司法公信力发挥了巨大作用。决认团审判是美国诉讼中的主导审判方式，决认团在美国司法发展中意义重大，不仅集中反映了美国法律文化的显著特征，也表达了美国人民对自由及正义的追求。作为如此重要的制度，其名称的传统翻译却存在值得商榷之处，jury 现行广为接受的译法是“陪审”，在各种新闻报导、影视作品中基本上都以这一译法出现。而鉴于上文论述的该制度的重要性，是否应反思“陪审”二字能否体现这样的重要程度？选择 Massachusetts Jury Information 作为实践项目，主要目的就是正确介绍美国的 jury system，采纳并推介对 jury 及 jury system 中一系列术语的新译。胡兆云认为：

“任何一个制度，都必定有其一系列术语，决认制度亦是如此。作为一种制度，决认制度具有一系列独特的术语。因此，在翻译的时候，须考虑整套术语的翻译，整套汉译术语需反映出决认制度特色，不宜与非决认制度术语相混淆。

在汉语中，决认制度须有一套与非决认制度不同的独立的术语体系，这些汉译术语须与英语术语一一对应，体现出与系统外术语的不同。”（胡兆云，2011b:63）

本人认同胡兆云的观点。本人与翻译实践小组精诚合作，系统地将所选部分的内容翻译成中文，对一些术语及专门用语引入胡兆云等首创或倡导的新译，辨析 jury 等关键术语流传已久的误译并论证改译合理性，还原术语本真。

本译作也可以为我国司法系统人员、法律学者及感兴趣人士提供富有价值的参考资料，有助于他们进一步认识了解马萨诸塞邦及美国的决认团制度，在推动我国司法改革特别是人民陪审员制度改革及法制发展进步的过程中加以借鉴。

1.2 笔者所翻译部分介绍及翻译概述

笔者所译的第 234A 章属于 History of the Jury System in Massachusetts（<http://www.mass.gov/courts/jury-info/mass-jury-system/history/>）页面的延伸内容，其中规定了决认员服务资格、决认员遴选办法、征召办法、决认员的权利与义务、补贴办法及失职处罚、法院及决认团专员办公室的相关职责、决认团选任办法等，内容详尽，赏罚明晰，是窥探美国决认团制度立法保障的一个窗口。制

度的有效实施需要立法的保障,美国的决认团制度历经两百多年而屹立不倒,并不断发展进步,立法上的保障就是一个重要因素。美国的决认团制度具有广泛的法律基础,除本文所选章节外,在宪法、制定法及《美国联邦刑事诉讼规则》等各种法律中都有关于决认团制度的规定,如1791年通过的《权利法案》中明确规定“在一切刑事诉讼中,被告有权由公正的陪审团予以迅速和公开的审理”(纪念美国宪法颁布200周年委员会,2006:269),宪法第六修正案(1791年)“在所有刑事犯罪中,被指控者享有由犯罪行为发生地的州和地区的、不偏不倚的陪审团予以迅速而公开的审判的权利”(纪念美国宪法颁布200周年委员会,2006:270),因此,所选法律条款的翻译对于了解、借鉴美国决认团制度的立法保障机制也具有十分重要的参考意义。

在具体的翻译实践上,词语层面,法律术语的准确翻译是决定译文质量的关键,在靶语中选择对等的词语对于文本意义的正确传达具有至关重要的意义,一个词在不同的语境下有不同的含义,要选出最适合语篇语境的说法。笔者参考胡兆云教授、赵心树教授等人对jury及jury system相关术语的研究、思考与辨误,采用了胡兆云首创的“jury——决认”、“verdict——威定”、“direct/direction——导示”、“charge——咨示”、“summons——征票”等新译,使译名具备独创性、准确性,从译名上给予这套制度应有的重视,体现出这套制度的独特性与重要性。语篇层面,鉴于法律文体庄重刻板、语句正规、结构严谨、频繁使用长句和复杂句的特点,翻译时尽量再现法律文体鲜明的语篇结构和语言特点,仔细选择靶语语境中对应文体的措辞、句式、语篇结构等,做到不仅传达原文意思,形式上也符合靶语社会的文体规范。Halliday认为,“语言是一个意义系统,伴随着这个系统的是用来体现意义的形式。”(Halliday, 1994:xiv, 黄国文译),也就是说,语言首先是个意义系统,而形式在语言这个意义系统中用来体现意义的结构。(黄国文, 2002:26)所以,翻译时,原文与译文的对等关系不只是在形式上,即词汇、语法上的对等,更重要的是意义上的对等。为此,笔者灵活运用句式转换、拆译、增词、词性转换、被动式转主动式等各种翻译技巧,力求用靶语语篇表达原语语篇的意义,传达原语语篇的信息,实现原语语篇的交际目的。

第二章 英文原文与中文译文

2.1 英文原文

CHAPTER 234A

OFFICE OF JURY COMMISSIONER FOR THE COMMONWEALTH

Section 1 Application of chapter to particular counties

Section 1. This chapter shall apply in every county in the commonwealth which has been designated as a participating county as hereinafter provided. Middlesex county shall be a participating county as of the effective date of this chapter. The supreme judicial court shall designate such further participating counties and the dates on which the various sections of this chapter shall become applicable within such participating counties. The supreme judicial court shall make such designations in a manner that will expand the application of this chapter to all counties in an orderly, prudent, and expeditious manner.

Whenever any section of this chapter shall become applicable within a participating county, all provisions of law which are inconsistent with such section shall cease to be effective within such participating county. Hereinafter in this chapter, the word “county” shall mean “participating county” unless specifically stated otherwise.

Section 2 Judicial districts; eligibility for jury service

Section 2. The judicial districts for purposes of this chapter shall be the counties unless modified by the supreme judicial court. The supreme judicial court may, by rule of court, define judicial districts for purposes of this chapter which differ in geographical area and population from the counties in accordance with the following principles: a judicial district shall be the geographical area encompassing a designated list of cities and towns; a judicial district may be defined for, or associated with, a single court or court location, or it may be defined for, or associated with, several courts or court locations.

Every citizen shall have the opportunity to serve as a grand and trial juror in at least one judicial district. There shall be no proscription against citizens of certain cities and towns being eligible or subject to perform grand or trial juror service in more than one judicial district.

Section 3 Juror service

Section 3. Juror service in the participating counties shall be a duty which every person who qualifies under this chapter shall perform when selected. All persons selected for juror service on grand and trial juries shall be selected at random from the population of the judicial district in which they reside. All persons shall have equal opportunity to be considered for juror service. All persons shall serve as jurors when selected and summoned for that purpose except as hereinafter provided. No person shall be exempted or excluded from serving as a grand or trial juror because of race, color, religion, sex, national origin, economic status, or occupation. Physically handicapped persons shall serve except where the court finds such service is not feasible. The court shall strictly enforce the provisions of this section.

Section 4 Disqualification from juror service

Section 4. Any citizen of the United States who is a resident of the judicial district or who lives within the judicial district more than fifty per cent of the time, whether or not he is registered to vote in any state or federal election, shall be qualified to serve as a grand or trial juror in such judicial district unless one of the following grounds for disqualification applies:

1. Such person is under the age of eighteen years.
2. Such person is seventy years of age or older and indicates on the juror confirmation form an election not to perform juror service.
3. Such person is not able to speak and understand the English language.
4. Such person is incapable, by reason of a physical or mental disability, of rendering satisfactory juror service. Any person claiming this disqualification must submit a letter from a registered physician stating the nature of the disability and the physician's opinion that such disability prevents the person from rendering satisfactory juror service. In reaching such opinion, the physician shall apply the

following guideline: a person shall be capable of rendering satisfactory juror service if such person is able to perform a sedentary job requiring close attention for six hours per day, with short work breaks in the morning and afternoon sessions, for three consecutive business days. If, according to the aforementioned guideline, a person shall be permanently incapable of rendering satisfactory jury service during the person's lifetime, the person claiming such permanent disqualification shall submit a letter from a registered physician stating the nature of the disability and the physician's opinion that such disability will permanently prevent the person from rendering satisfactory jury service. If the jury commissioner determines that the person is permanently disabled, then the person shall be considered permanently ineligible for jury service, and the person's name and physician's letter shall be placed on record with the office of jury commissioner. The jury commissioner shall make a decision on such matter promptly upon receipt of the aforementioned letter. For the purposes of this section, "physician" shall include any accredited Christian Science practitioner.

5. Such person is solely responsible for the daily care of a permanently disabled person living in the same household and the performance of juror service would cause a substantial risk of injury to the health of the disabled person. Any person claiming this disqualification must submit a letter from a registered physician stating the name, address, and age of the disabled person, the nature of the daily care provided by the prospective juror, and the physician's opinion that the performance of juror service would cause a substantial risk of injury to the health of the disabled person. Any person who is regularly employed at a location other than that of his household shall not be entitled to this disqualification.

6. Such person is outside the judicial district and does not intend to return to the judicial district at any time during the following year.

7. Such person has been convicted of a felony within the past seven years or is a defendant in pending felony case or is in the custody of a correctional institution.

8. Such person has served as a grand or trial juror in any state or federal court within the previous three years or the person is currently scheduled to perform such

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